S.B.Civil Writ Petition NO.3126/2005

Mohd. Sadiq
vs

Smt. Paro Devi & Anr.

DATE OF ORDER : - 25.5.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. BN Kalla, for the petitioner.

Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 7.5.2005 by which the petitioner's application filed under Order 7 Rule 11 CPC was dismissed by the trial court.

The petitioner's objection is that the suit filed by the plaintiff-non-petitioner is barred by time as it has been filed for specific performance of contract dated 27.1.1996. The suit has been filed on 4th April, 2005.

The trial court rejected the petitioner's application on the ground that the question of limitation in the facts of this case is a disputed question of fact in view of the fact that there are certain conditions on

the basis of which the period to seek enforcement of agreement depends upon the compliance by the defendants. The allegation of plaintiff is that defendant did not comply with the conditions of the agreement and did not obtain the 'Sanad' and did not inform the plaintiff timely. These are pure questions of facts, which can be gone into only in the trial and the trial court has not committed any mistake in dismissing the application of the petitioner filed under Order 7 Rule 11 CPC on the ground mentioned above.

Learned counsel for the petitioner relied upon the judgment of this Court delivered in the case of Santa Singh Vs. Darbara Singh & Ors reported in RLR 1986 666 and the judgment of the Hon'ble Supreme Court delivered in the case of Saleem Bhai & Ors Vs. State of Maharashtra & Ors reported in 2003(1) DNJ (SC) 107 wherein this court in second appeal in Santa Singh's case on finding that the cause of action accrued for filing suit on a particular date, the suit is barred by time and in the judgment of the Hon'ble Supreme Court, the Hon'ble Supreme Court held that it is not necessary to file written statement for getting decision on the application filed under Order 7 Rule 11 CPC and the plaint can be rejected only on moving an application. There is no dispute with respect to the proposition as given in the above two judgments. The court below has not rejected the petitioner's

application on the ground that petitioner should first file written statement and the court has not held that the suit is within period of limitation. The court below has only rejected the application of the petitioner filed under Order 7 Rule 11 CPC.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

cpgoyal/-